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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04-296; PS Docket No. 15-94; FRS 16653]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) partially grants a petition for partial reconsideration of the Emergency Alert System (EAS) testing requirements that apply to Satellite Digital Audio Radio Service (SDARS) providers filed by XM Radio Inc. (XM), as subsequently modified by XM's successor in interest, Sirius Satellite Radio Inc. (Sirius XM), and amends the EAS testing requirements that apply to SDARS providers.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: David Munson, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-2921, or by email at David.Munson@fcc.gov. For additional information concerning the information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202-418-2991, or by email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Order) in EB Docket No. 04-296, PS Docket No. 15-94, FCC 19-57,

adopted on June 25, 2019, and released on June 27, 2019. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov.

Synopsis

1. In the Order, the Commission partially grants a petition for partial reconsideration of the EAS First Report and Order (First Report and Order) in EB Docket No. 04-296, 70 FR 71023, 71072 (Nov. 25, 2005), filed by XM (the “XM Petition”), which was subsequently modified by supplemental filings made by Sirius XM, and adopts changes to its Part 11 EAS rules governing test requirements to harmonize the EAS testing requirements that apply to SDARS providers with the testing requirements applied to Direct Broadcast Satellite (DBS) providers.

I. BACKGROUND

A. The EAS

2. The EAS is a national public warning system through which alerts concerning impending emergencies are distributed to the public by EAS Participants. The primary purpose of the EAS is to provide the President with “the capability to provide immediate communications and information to the general public at the national, state and local levels during periods of national emergency.” The EAS also is used by state and local governments, as well as the National Weather Service (NWS), to distribute alerts.

3. The EAS uses a broadcast-based, hierarchical alert message distribution architecture to deliver alerts to the public. Using this system, the originator of an alert

message at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol, a series of numeric codes that provides basic information about the alert. When the transmission of an alert encoded in the EAS Protocol is received by the EAS equipment of EAS Participants assigned to monitor the transmission of the originating broadcaster, the encoded EAS header code tones activate the EAS equipment, which then decodes the numeric codes in the original alert message, re-encodes that information, and broadcasts anew the EAS header code tones, attention signal and audio message to the public. This process is repeated as the alert is rebroadcast to other downstream monitoring EAS Participants until all affected EAS Participants have received the alert and delivered it to the public. This process of EAS alert distribution among EAS Participants is often referred as the “daisy chain” distribution architecture.

4. To ensure that the EAS system and EAS Participants’ EAS equipment will function properly, and that alerts will be accurately and consistently distributed, delivered to the public, the EAS rules contain national, monthly and weekly testing requirements that apply to different services, including broadcast, cable, DBS and SDARS. The EAS weekly test generally involves EAS Participant transmission of EAS header and End of Message (EOM) codes generated internally within their EAS equipment. For the EAS monthly test, a test alert message, composed of EAS header codes, an attention signal, test audio script and the EOM code, is transmitted from key sources identified in the State EAS Plan, which in turn are monitored by EAS Participants, who retransmit the test alert as they would an actual EAS alert. EAS Participants are required to determine the cause of any failure to receive the monthly test or weekly activation, and make appropriate

entries in their station logs or facility records.

B. The EAS First Report and Order

5. In the EAS First Report and Order, the Commission extended EAS obligations to various digital services, including SDARS. SDARS, commonly known as “satellite radio,” is “[a] radiocommunication service in which audio programming is digitally transmitted by one or more space stations directly to fixed, mobile, and/or portable stations, and which may involve complementary repeating terrestrial transmitters, telemetry, tracking and control facilities.” More colloquially, SDARS is primarily a satellite-delivered service in which digital radio programming is sent directly from satellites to subscriber receivers either at a fixed location or in motion.

6. With respect to testing requirements, although the Commission acknowledged that SDARS did not (and could not) supply local programming and EAS alerts, it nonetheless imposed the same testing regime as that applied to broadcasters, requiring “SDARS licensees to test their ability to receive and distribute EAS messages in the same manner required of other EAS participants in section 11.61 of our rules and to keep records of all tests.” Accordingly, SDARS licensees were required to adhere to the general monthly test requirements that apply to most other EAS Participant services. With respect to weekly test requirements, the Commission required that “SDARS providers must conduct tests of the EAS Header and EOM codes at least once a week at random days and times on all channels.” By contrast, the Commission adopted less burdensome testing requirements for DBS providers on grounds that performing such tests on all channels simultaneously on an inherently nationwide platform could pose technical challenges. More specifically, whereas SDARS was required to conduct

weekly and monthly tests on all channels, the Commission required that DBS providers need only log receipt of other EAS Participants' weekly tests, and that monthly tests "be performed on 10% of all channels monthly (excluding local-into-local channels for which the monthly transmission tests are passed through by the DBS provider), with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested."

C. The Petition

7. As originally filed, the XM Petition requested that the Commission modify the SDARS EAS test requirements to more accurately reflect the national nature of the service. The Petition first requested that the EAS testing rules for SDARS be revised to require (i) a yearly test that would be transmitted on every channel simultaneously, and (ii) weekly and monthly tests that would be distributed on XM's Instant Traffic, Weather and Alert channels. XM argued that requiring weekly and monthly tests on all of its channels "will mislead subscribers to believe that satellite radio operators transmit state and local EAS alerts on all channels, when in fact state and local EAS alerts will only be transmitted on those XM Instant Traffic, Weather & Alert channels on which XM has informed subscribers that it will offer state and local EAS messages."

8. On July 31, 2014, Sirius XM submitted an ex parte letter in which it indicated that "[t]he passage of time and changed circumstances since [XM] initially filed the [XM Petition] has also simplified the relief that is needed." Specifically, Sirius XM requested that the Commission modify the testing rules for SDARS to make them comparable to those applied to DBS providers. In justifying this request, Sirius XM

contended that the requirement to carry weekly and monthly EAS tests on all Sirius XM channels “has imposed an excessive, disproportionate, and unnecessary burden on SiriusXM and its subscribers.” To that end, Sirius XM observed that “[u]nlike other multichannel services such as cable television, the satellite radio service rarely has natural breaks in programming for inserting a test, and never has uniform breaks that apply to all of our approximately 150 channels.” Sirius XM also contended that weekly testing of its system is “unnecessary and duplicative,” arguing, among other things, that it is “largely superseded by FEMA’s own testing of [Sirius XM’s EAS encoder/decoder] which is central to our EAS capabilities,” and achievable through logging requirements, “as [with] DBS.”

9. On June 5, 2017, Sirius XM submitted a Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver (the “Sirius XM Motion”) in which it requested leave to supplement the XM Petition with the modified testing relief requested in its July 2014 ex parte letter. Sirius XM subsequently submitted a Further Supplement of Sirius XM Radio Inc. to Petition for Reconsideration and Request for Limited Waiver (the “Further Supplement”) to refine the relief requested in the Sirius XM Motion.

10. On November 7, 2018, the Public Safety and Homeland Security Bureau (Bureau) released a Public Notice seeking comment on Sirius XM’s July 2014 ex parte letter, Sirius XM Motion, Further Supplement and a November 2018 Letter submitted by Sirius XM as a transmittal letter to incorporate into the record of this proceeding FEMA correspondence identifying its official position regarding which Sirius XM channels it will permit to be monitored for federal EAS alerts. One comment was filed, and one

reply comment was filed (by Sirius XM).

II. DISCUSSION

11. As a threshold matter, the Commission grants Sirius XM's motion for leave to modify the XM Petition as described in the Sirius XM Motion, Further Supplement and November 2018 Letter. The Commission observes that comment was sought on these filings and that no party raised objections to the relief requested. The Commission further observes that changed circumstances arose during the pendency of the XM Petition's review that fundamentally altered the nature of the initial relief requested in the XM Petition. In light of these developments, the Commission concludes that it is in the public interest to grant the Sirius XM Motion and consider the XM Petition as modified by the above-identified filings to the extent noted herein.

12. As described below, the Commission agrees with Sirius XM that modifying the EAS testing requirements for SDARS to make them comparable to those applied to DBS providers is consistent with the purpose of the EAS testing rules and in the public interest, and amends section 11.61 of the part 11 rules accordingly. Specifically, the Commission will require SDARS providers to log receipt of the weekly test, and to transmit the monthly test on 10% of all of its channels, with channels tested varying from month to month, so that over the course of a given year, 100% of all of its channels are tested.

13. The Commission finds that harmonizing SDARS testing requirements with DBS testing requirements is appropriate because these services are technologically similar. SDARS is similar to DBS in that they are both satellite-delivered services in which digital programming is sent directly from satellites to subscriber receivers. By

virtue of similar network architectures, both services are inherently nationwide services. Further, SDARS and DBS are regulated in a similar manner. For example, both SDARS and DBS providers are subject to similar public interest and other obligations under Part 25 of the Commission's rules.

14. Notwithstanding this similarity, in the EAS First Report and Order, the Commission applied dissimilar testing requirements: it imposed on SDARS providers the same general monthly and weekly testing requirements that it applied to terrestrial EAS Participant services, while applying modified testing requirements to DBS. The Commission concluded that requiring DBS providers to conduct weekly and monthly tests on all channels simultaneously on an inherently nationwide platform could pose technical challenges. Accordingly, it required that DBS providers need only log receipt of other EAS Participants' weekly tests, and perform monthly tests on 10% of all channels such that over the course of a year, all channels are tested.

15. Meanwhile, the Commission required SDARS to conduct weekly and monthly tests on all channels. The Commission agrees with Sirius XM that these testing obligations are more onerous than those imposed on DBS (and other services subject to EAS requirements). Both services provide programming via satellites over multiple channels, which requires interrupting whatever programming is on these multiple channels to transmit the test. However, whereas DBS is not required to transmit weekly tests at all, and can transmit the monthly test over 10% of its channels per month, SDARS is required to transmit weekly tests on all of its channels every week, and monthly tests on all of its channels once per month. In SDARS's case, there are no uniform breaks across all channels, such as a commercial break, that might unobtrusively accommodate a

test. Moreover, because SDARS is an audio service, the EAS header code tones, scripted audio and attention signal (in the case of a monthly test) are the only audio SDARS listeners will hear during the test. The Commission concluded in the EAS First Report and Order that the testing requirements adopted for DBS were “no more onerous to DBS providers than those required of any other EAS participant.” On their face, the disparity in the testing requirements imposed upon DBS as compared to SDARS—two similarly situated services—confirm that the same cannot be said with respect to SDARS.

16. Nor is the purpose of EAS testing undermined by harmonizing the SDARS testing requirements with the DBS testing requirements. In the EAS First Report and Order, the Commission stated that the “EAS testing regime is designed to test not only the EAS participant’s ability to receive the message from the source it monitors, but also the ability of the participant to disseminate an alert to its entire audience.” This purpose will continue to be fully realized by applying the weekly and monthly DBS testing requirements to SDARS providers, because the weekly logging requirement should identify alerts not received, and the monthly requirements will ensure that, on a rolling basis, over a one year period, all Sirius XM’s channels are able to disseminate the alert to its listeners. Moreover, as Sirius XM points out, because Sirius XM serves as a PEP source for national EAS alerts, FEMA already tests Sirius XM’s EAS equipment “on a regular basis through remote polling . . . without even notifying SiriusXM of the testing – unless a problem is discovered – and without any disruption to [Sirius XM’s] customers.”

III. PROCEDURAL MATTERS

A. Accessible Formats

17. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer Sirius XM Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

B. Paperwork Reduction Act Analysis.

18. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These modified requirements were submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies were invited to comment on the new or modified information collection requirements contained in this proceeding. OMB approved the modified information collection requirements on December 26, 2019, and the Commission published a notice in the **Federal Register** announcing such OMB approval on February 6, 2020, published at 85 FR 6951, February 6, 2020. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), adopted in August 2004, which sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

19. In this present document, the Commission has assessed the effects of the information collection associated with the modified reporting requirement set forth in the Order, and finds that because this information collection involves a decrease in testing burdens that should more than offset the increase in logging burdens, the net burden of

information collection should be reduced and therefore should not pose a substantial burden for businesses with fewer than 25 employees.

C. Congressional Review Act

20. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

D. Supplemental Final Regulatory Flexibility Analysis.

21. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), in EB Docket No. 04-296, 69 FR 52843 (Aug. 30, 2004). The Commission sought written public comment on the proposals in the NPRM, including comments on the IRFA. No comments were filed addressing the IRFA. The Commission included a Final Regulatory Flexibility Analysis (FRFA) in Appendix D of the EAS First Report and Order in this proceeding. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA to reflect the actions taken in this Order and conforms to the RFA.

1. Need for, and Objective of, the Order on Reconsideration

22. In the EAS First Report and Order, the Commission extended EAS obligations to digital television and radio, digital cable, and satellite television and radio services. Among other things, the Commission extended EAS obligations to SDARS providers. A petition for partial reconsideration of the EAS First Report and Order was

filed and subsequently modified by Sirius XM, the sole provider of SDARS in the United States.

23. The Commission grants on reconsideration, to the extent described herein, Sirius XM's petition for partial reconsideration of the EAS First Report and Order by revising the EAS testing requirements for SDARS providers to make them symmetrical to applied to DBS providers.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

24. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

25. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

26. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning

as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. As noted above, a FRFA was incorporated into the EAS First Report and Order. In that analysis, the Commission described in detail the small entities that might be significantly affected by the rules adopted in the EAS First Report and Order. This Supplemental FRFA reflects updated information, where applicable, for the descriptions and estimates of the number of small entities in the previous FRFA in this proceeding.

29. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

30. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with

the Internal Revenue Service (IRS).

31. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

32. Television Broadcasting. This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that

751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

33. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91%) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

34. The Commission notes, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. The Commission’s estimate, therefore likely overstates the number of small entities that might be affected by the Commission’s action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires

that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

35. Radio Stations. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA’s size standard the majority of such entities are small entities.

36. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9%) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed

commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371. The Commission notes that it has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,128. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

37. The Commission also notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation. The Commission further notes, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus the Commission's estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

38. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standards for the purpose of cable rate regulation.

Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

39. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed

\$250 million, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

40. Broadband Radio Service and Educational Broadband Service.

Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

41. BRS - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

42. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15% discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25% discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35% discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

43. EBS - Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA’s small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In

addition to Census data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

44. Wireless Carriers and Service Providers. Neither the SBA nor the Commission has developed a size standard specifically applicable to Wireless Carriers and Service Providers. The closest applicable SBA category and size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Carriers and Service Providers are small entities.

45. According to internally developed Commission data for all classes of Wireless Service Providers, there are 970 carriers that reported they were engaged in the provision of wireless services. Of this total, an estimated 815 have 1,500 or fewer employees, and 155 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of Wireless Carriers and Service Providers can be considered small.

46. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has

average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40% of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

47. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction

of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

48. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Commission's actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus using the SBA's size standard the majority of incumbent LECs can be considered small entities.

49. Competitive Local Exchange Carriers (Competitive LECs). Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than

1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

50. Satellite Telecommunications. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

51. All Other Telecommunications. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of \$ 32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 42 firms had annual receipts of \$25 million to \$49, 999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by the Commission’s action can be considered small.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

52. The reporting, recordkeeping, and other compliance requirements resulting from the EAS First Report and Order as described in the previous FRFA in this proceeding are hereby incorporated by reference. The actions the Commission takes in the Order modify the SDARS testing requirements to make them symmetrical to the DBS testing requirements, and do not otherwise amend or revise the requirements adopted in

the EAS First Report and Order. More specifically, SDARS providers will be required to log receipt of the weekly test (which represents a new reporting requirement for SDARS providers), and to transmit the monthly test on 10% of all of its channels, with channels tested varying from month to month, so that over the course of a given year, 100% of all of their channels are tested.

6. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”

54. In granting partial reconsideration of the EAS First Report and Order, the Commission opted to modify the current SDARS testing requirements and make them symmetrical to the DBS testing requirements based on its finding that SDARS and DBS services are similarly situated. Notwithstanding their similarity and the similar challenges the two services faced in conducting weekly and monthly tests on all channels simultaneously, in the EAS First Report and Order, the Commission applied the same general monthly and weekly testing requirements to SDARS providers that it applied to terrestrial EAS Participant services, while applying modified testing requirements to DBS

providers. The Commission's action to harmonize the SDARS testing requirements with the DBS testing requirements on reconsideration should significantly reduce the economic impact for SDARS providers associated with compliance with the general monthly and weekly testing requirements adopted in the EAS First Report and Order. The modified weekly test requirement for SDARS of substituting logging of receipt of a weekly test for conducting the weekly test, represents a reduced burden, as EAS equipment automatically records when weekly tests are received. Further, not having to transmit the EAS header codes and EOM on all channels randomly once per week relieves the SDARS provider from having to coordinate and administer such testing.

7. Report to Congress

55. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.

E. People with Disabilities.

56. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

IV. ORDERING CLAUSES

57. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 4(o),

301, 303(r), 303(v), 307, 309, 335, 403, 405, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 405, and 606, and section 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Partial Reconsideration and Clarification of Sirius XM Radio Inc., as modified by the Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver ARE GRANTED to the extent set forth herein;

58. IT IS FURTHER ORDERED that pursuant to section 1.429(d) of the Commission's rules, 47 CFR 1.429(d), Sirius XM Radio Inc.'s request for leave to supplement its pending petition for reconsideration set forth in the Motion of Sirius XM Radio Inc. for Leave to Supplement Petition for Reconsideration and Request for Limited Waiver IS GRANTED to the extent set forth herein;

59. IT IS FURTHER ORDERED that pursuant to section 1.429(d) of the Commission's rules, 47 CFR 1.429(d), the Further Supplement of Sirius XM Radio Inc. to Petition for Reconsideration and Request for Limited Waiver IS DISMISSED to the extent set forth herein;

60. IT IS FURTHER ORDERED that Part 11 of the Commission's rules, 47 CFR Part 11, IS AMENDED as set forth herein, and such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of the rule amendments in the Federal Register, except to the extent they contain information collections subject to PRA review. Rule amendments that contain information collections subject to PRA review SHALL BECOME EFFECTIVE upon the effective date announced when the Commission publishes a notice in the Federal Register announcing such OMB approval and the

effective date.

61. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 11

Radio, Television.

FEDERAL COMMUNICATIONS COMMISSION

Cecilia Sigmund,
Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Amend § 11.61 by:

- a. Adding paragraph (a)(1)(iii);
- b. Removing paragraph (a)(2)(i)(D); and
- c. Revising paragraph (a)(2)(ii).

The addition and revision read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * * * *

(1) * * *

(iii) SDARS providers must comply with this section by monitoring a state or local primary source to participate in testing. Tests should be performed on 10% of all channels monthly, with channels tested varying from month to month, so that over the course of a given year, 100% of all channels are tested.

(2) * * *

(ii) DBS providers, SDARS providers, analog and digital class D non-commercial educational FM stations, analog and digital LPFM stations, and analog and digital LPTV stations are not required to transmit this test but must log receipt, as specified in §11.35(a) and 11.54(a)(3).

* * * * *

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